

**REMARKS:**

**Errors on Office Action Summary Form PTO-326**

There are several errors and inconsistencies on the Office Action Summary Sheet PTO-326. It is erroneously stated that the Office Action is responsive to the communication filed 24 February 2003, when in fact it is responsive to the communication filed 8 December 2003. Both the box that states "This action is FINAL" and the box that states "This action is non-final" are checked. Claims 11 and 12 are listed as both allowed and rejected. The status of claims 1-2 (i.e. whether rejected, allowed, or objected to) is omitted completely. In light of these inconsistencies and omissions, for purposes of response, Applicant is going by what is stated in the body of the action rather than what is stated on the Office Action Summary form.

**Final Rejection Premature**

According to MPEP 706.07, "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97 (c) with the fee set forth in 37 CFR 1.17(p)." Since a new ground of rejection was applied against claim 1, which rejection was not necessitated by applicant's amendment of the claim, nor based on information submitted on an IDS filed during the period and with the fee set forth in the rules, the final rejection is premature. In line with the procedure discussed in MPEP 706.07(c) and MPEP 706.07(d), applicant hereby requests that the examiner reconsider and withdraw the finality of the

last Office action.

**Claim Rejections - 35 USC § 103**

Claims 1-3, 5-7, 9, 10, and 22 stand rejected as being unpatentable over Vaughan et al. '060 in view of Horobin.

Claims 1 and 22 have been amended to require an additional horizontal row of horizontally elongated openings having a nominal height and which have centerlines arranged in a line and located to bisect the height of the first and second elongate plates. As discussed on page 10 of the specification in reference to openings 30, 32, 34, 36 "As a consequence, with their center lines arranged in line, it is easy for a mechanic to saw through tie bracket 10 horizontally without diminishing structural integrity of either remaining section of the tie bracket and of the entire form module. This must occasionally be done to create a form half the height of the uncut form to limit form height to the desired height of a finished wall." By having a plurality of openings aligned in such a way and supported at end by the elongate plates that extend the full height of the form, there is sufficient material joining the upper and lower halves of the form to provide strength and structural integrity of the form as a whole, and when the wall is finished fasteners can be attached to the wall with confidence anywhere along the height of the wall in line with the elongate plate, but it is a simple matter for the form to be separated into two halves with a saw.

Neither Vaughan et al. nor Horobin disclose or make obvious such a feature as is now required in both independent claims 1 and 22.

Claims 2-3 have been cancelled, making the rejection of these claims moot.

Regarding claim 6, contrary to Examiner's assertion, Fig. 19 of Vaughan '060 does not

show an upwardly open receptacle whose interior has a height greater than its width, as required by claim 6. The upwardly open receptacle that Vaughan shows, which is more easily seen in Fig. 15 at reference numeral 1950, sits on a supporting post which is taller than the receptacle is wide, but it can clearly be seen that the upwardly open receptacle itself has an interior that is a V-shape, which interior is wider than it is tall.

Regarding claim 7, this claim further defines the additional horizontal row of openings as being at least three openings, with the outer openings having a height greater than the central opening of that row. As discussed on page 10 of the specification, the reason for the greater height of the outer openings is that these openings (30, 36) are designed to accommodate plural cables and conduits therein, whereas the central opening (32, 34) need only nominal height for accommodating a saw blade in the event a user decides to cut the tie bracket in half.

Regarding claim 9, this claim has now been amended to require that the tie bracket includes at least one opening located entirely above said uppermost spanning member. While the Examiner referred to opening (D) as being located above the uppermost spanning member in (Fig. 10) of Horobin. In the Horobin reference, only a portion of the opening extends slightly higher than the central portion of spanning member 54. In an attempt to define around this reference, in describing any one of Applicant's openings 40, 42, and 43, the claim has been amended to require that the opening is *entirely* above the spanning member, which Horobin clearly does not disclose.

As for claim 10, this claim requires that "said lowermost spanning member has at least one circumferentially closed, rounded opening formed therein". In his rejection of the claims, at the top of page 3, the Examiner defined the lowermost spanning member as element 1620. However at the top of page 5, in rejecting claim 10 he is now defining the opening as being below element

1620 and to the right of 1710 in Fig. 15 of Vaughan et al.. A look at Figure 15 of Vaughan et al. and a careful reading of the Examiner's rejection will show that the opening he is relying on in an attempt to meet claim 10 is actually an opening formed between elements 1620 and 1710, which opening, as Examiner himself states, is below lowermost spanning member 1620, not formed therein, as required by the claim. In Fig. 1 of the present application it can be clearly seen that opening 46 is formed within lowermost spanning member 24, as claimed.

For the reasons stated above, it is believed that claims 1, 5-7, 9, 10, and 22 are allowable over the art of record. It is therefore respectfully requested that the rejection of these claims be reconsidered and withdrawn.

#### **Claim Objections**

Claim 21 was objected as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 21 was rewritten in independent form including all of the limitations of the base claim and any intervening claims, and is therefore believed to be allowable.

#### **Allowed Claims**

Claims 11-18 have been allowed.

#### **CONCLUSION**

For the foregoing reasons, all the claims now pending in the present application are

believed to be allowable, and the present application is in condition for allowance. Accordingly, favorable reconsideration of the application in light of the amendment and remarks is respectfully requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned representative at the number listed below.

Respectfully submitted,

A handwritten signature in cursive script that reads "Randy Shay".

Randy Shay  
Agent for Applicant  
Registration No. 44,055  
Siemens Patent Services, L.C.  
P.O. Box 2607  
Fairfax, VA 22031  
(540) 548-4404